

AMENDMENTS TO LB 289

Introduced by Judiciary

1           1. Strike the original sections and insert the following  
2 new sections:

3           Section 1. This act shall be known and may be cited as  
4 the Commercial Real Estate Broker Lien Act.

5           Sec. 2. For purposes of the Commercial Real Estate Broker  
6 Lien Act:

7           (1) Commercial real estate means any real estate other  
8 than real estate containing no more than four residential units or  
9 real estate on which no buildings or structures are located and  
10 that is zoned for single-family residential use. Commercial real  
11 estate does not include single-family residential units such as  
12 condominiums, town houses, or homes in a subdivision when sold,  
13 leased, or otherwise conveyed on a unit-by-unit basis, even though  
14 these units may be a part of a larger building or parcel of real  
15 estate containing more than four residential units;

16           (2) Commission means any and all compensation that may  
17 be due a commercial real estate broker for performance of licensed  
18 services; and

19           (3) Commission agreement means a written agreement  
20 with a designated commercial real estate broker as required by  
21 subdivisions (2) through (6) of section 76-2422.

22           Sec. 3. (1)(a) A commercial real estate broker shall  
23 have a lien upon commercial real estate or any interest in that

1 commercial real estate that is the subject of a purchase, lease,  
2 or other conveyance to a buyer or tenant of an interest in the  
3 commercial real estate in the amount of commissions that the  
4 commercial real estate broker is due.

5 (b) The lien shall be available only to the commercial  
6 real estate broker named in a commission agreement signed by an  
7 owner, buyer, or tenant or their respective authorized agents as  
8 applicable and is not available to an employee, agent, subagent, or  
9 independent contractor of a commercial real estate broker.

10 (2) A lien under this section shall attach to commercial  
11 real estate or any interest in the commercial real estate when:

12 (a) The commercial real estate broker is entitled to  
13 a commission provided in a commission agreement signed by the  
14 owner, buyer, tenant, or their respective authorized agents, as  
15 applicable; and

16 (b) The commercial real estate broker records a notice  
17 of lien in the office of the register of deeds of the county in  
18 which the commercial real estate is located, prior to the actual  
19 conveyance or transfer of the commercial real estate against which  
20 the commercial real estate broker is claiming a lien, except as  
21 provided in this section. The lien shall attach as of the date of  
22 the recording of the notice of lien and shall not relate back to  
23 the date of the commission agreement.

24 (3) In the case of a lease, including a sublease or an  
25 assignment of a lease, the notice of lien shall be recorded not  
26 later than ninety days after the tenant takes possession of the  
27 leased premises. The lien shall attach as of the recording of

1 the notice of lien and shall not relate back to the date of the  
2 commission agreement.

3 (4) (a) If a commercial real estate broker is due an  
4 additional commission as a result of future actions, including, but  
5 not limited to, the exercise of an option to expand the leased  
6 premises or to renew or extend a lease pursuant to a commission  
7 agreement signed by the then owner or tenant, the commercial real  
8 estate broker may record its notice of lien at any time after  
9 execution of the lease or other commission agreement which contains  
10 such option, but not later than ninety days after the event or  
11 occurrence on which the future commission is claimed occurs.

12 (b) In the event that the commercial real estate is  
13 sold or otherwise conveyed prior to the date on which a future  
14 commission is due, and if the commercial real estate broker  
15 has filed a valid notice of lien prior to the sale or other  
16 conveyance of the commercial real estate, then the purchaser or  
17 transferee shall be deemed to have notice of and shall take title  
18 to the commercial real estate subject to the notice of lien. If  
19 a commercial real estate broker claiming a future commission fails  
20 to record its notice of lien for future commission prior to the  
21 recording of a deed conveying legal title to the commercial real  
22 estate to the purchaser or transferee, then such commercial real  
23 estate broker shall not claim a lien on the commercial real estate.  
24 This subsection shall not limit or otherwise affect claims or  
25 defenses a commercial real estate broker or owner or any other  
26 party may have on any other basis, in law or in equity.

27 (5) If a commercial real estate broker has a commission

1 agreement as described in subdivision (4)(a) of this section with  
2 a prospective buyer or tenant, then the lien shall attach upon the  
3 prospective buyer purchasing or otherwise accepting a conveyance  
4 or transfer of the commercial real estate and the recording of a  
5 notice of lien by the commercial real estate broker in the office  
6 of the register of deeds of the county in which the commercial  
7 real estate, or any interest in the commercial real estate, is  
8 located, within ninety days after the purchase or other conveyance  
9 or transfer to the buyer or tenant. The lien shall attach as of the  
10 date of the recording of the notice of lien and shall not relate  
11 back to the date of the commission agreement.

12           Sec. 4. The commercial real estate broker shall, within  
13 ten days after recording its notice of lien, either mail a copy of  
14 the notice of lien to the owner of record of the commercial real  
15 estate by registered or certified mail at the address of the owner  
16 stated in the commission agreement on which the claim for lien is  
17 based or, if no such address is given, then to the address of the  
18 commercial real estate on which the claim of lien is based. Mailing  
19 of the copy of the notice of lien is effective when deposited in  
20 a United States mailbox with postage prepaid. The commercial real  
21 estate broker's lien shall be unenforceable if mailing or service  
22 of the copy of notice of lien does not occur at the time and in the  
23 manner required by this section.

24           Sec. 5. The notice of lien shall state the name of  
25 the commercial real estate broker, the name as reflected in  
26 the commercial real estate broker's records of any person the  
27 commercial real estate broker believes to be an owner of the

1 commercial real estate on which the lien is claimed, the name  
2 as reflected in the commercial real estate broker's records of  
3 any person whom the commercial real estate broker believes to be  
4 obligated to pay the commission under the commission agreement, a  
5 description legally sufficient for identification of the commercial  
6 real estate upon which the lien is claimed, and the amount for  
7 which the lien is claimed. The notice of lien shall recite that  
8 the information contained in the notice is true and accurate to the  
9 knowledge of the signatories. The notice of lien shall be signed  
10 by the commercial real estate broker or by a person authorized to  
11 sign on behalf of the commercial real estate broker and shall be  
12 notarized.

13           Sec. 6. (1) Except as provided in subsections (2) and (3)  
14 of this section, a lien that has become enforceable as provided  
15 in section 3 of this act shall continue to be enforceable for two  
16 years after the recording of the lien.

17           (2) Except as provided in subsection (3) of this section,  
18 if an owner, holder of a security interest, mortgage, or trust  
19 deed, or other person having an interest in the commercial real  
20 estate gives the commercial real estate broker written demand to  
21 institute a judicial proceeding within thirty days, the lien lapses  
22 unless, within thirty days after receipt of the written demand, the  
23 commercial real estate broker institutes judicial proceedings.

24           (3) If a judicial proceeding to enforce a lien is  
25 instituted while a lien is effective under subsection (1) or (2)  
26 of this section, the lien continues during the pendency of the  
27 proceeding.

1           Sec. 7. (1) Recorded liens, mortgages, trust deeds, and  
2 other encumbrances on commercial real estate, including a recorded  
3 lien securing revolving credit and future advances for a loan,  
4 recorded before the date the commercial real estate broker's lien  
5 is recorded, shall have priority over the commercial real estate  
6 broker's lien.

7           (2) A construction lien claim that is recorded after the  
8 commercial real estate broker's notice of lien but that relates  
9 back to a date prior to the recording date of the commercial real  
10 estate broker's notice of lien has priority over the commercial  
11 real estate broker's lien.

12           (3) A purchase-money lien executed by the buyer of  
13 commercial real estate in connection with a loan for which any  
14 part of the proceeds are used to pay the purchase price of the  
15 commercial real estate has priority over a commercial real estate  
16 broker's lien claimed for the commission owed by the buyer against  
17 the commercial real estate purchased by the buyer.

18           Sec. 8. (1) Whenever a notice of a commercial real estate  
19 broker's lien has been recorded, the record owner of the commercial  
20 real estate, or the tenant in case of a lien upon the leasehold  
21 estate, may have the lien released by depositing funds equal to  
22 the full amount stated in the notice of lien plus fifteen percent  
23 to be applied towards any lien under section 3 of this act. These  
24 funds shall be held in escrow by such person and by such process  
25 which may be agreed to by the parties, either in the commission  
26 agreement or otherwise, for the payment to the commercial real  
27 estate broker or otherwise for resolution for their dispute or,

1 in the absence of any such mutually agreed person or process, the  
2 funds may be deposited with the district court by the filing of  
3 an interpleader. Upon such deposit of funds by interpleader, the  
4 commercial real estate shall be considered released from such lien  
5 or claim of lien. Upon written notice to the commercial real estate  
6 broker that the funds have been escrowed or an interpleader filed,  
7 the commercial real estate broker shall, within ten business days,  
8 record in the office of the register of deeds where the notice of  
9 commercial real estate broker's lien was filed pursuant to section  
10 3 of this act a document stating that the lien is released and the  
11 commercial real estate released by an escrow established pursuant  
12 to this section or by interpleader. If the commercial real estate  
13 broker fails to file such document, the person holding the funds  
14 may sign and file such document and deduct from the escrow the  
15 reasonable cost of preparing and filing the document. Upon the  
16 filing of such document, the commercial real estate broker shall  
17 be deemed to have an equitable lien on the escrow funds pending a  
18 resolution of the commercial real estate broker's claim for payment  
19 and the funds shall not be paid to any person, except for such  
20 payment to the holder of the funds as set forth in this section,  
21 until a resolution of the commercial real estate broker's claim for  
22 payment has been agreed to by all necessary parties or ordered by  
23 a court having jurisdiction.

24 (2) Except as otherwise provided in this section,  
25 whenever a commercial real estate broker's lien has been recorded  
26 and an escrow account is established either from the proceeds from  
27 the transaction, conveyance, or any other source of funds computed

1 as one-hundred-fifteen percent of the amount of the claim for  
2 lien, then the lien against the commercial real estate shall be  
3 extinguished and immediately become a lien on the funds contained  
4 in the escrow account. The requirement to establish an escrow  
5 account, as provided in this section, shall not be cause for any  
6 party to refuse to complete or close the transaction.